

Legal Services, Law & Governance

7 Newington Barrow Way, London, N7 7EP

Report of: Interim Director of Law & Governance and Monitoring Officer

Meeting of: Audit Committee

Date: 23 May 2023

Subject: Review of Council Constitution

1. Synopsis

- 1.1. On 13 March 2023, the Audit Committee approved Terms of Reference for a review of the Constitution to ensure it is up to date and fit for purpose.
 - To ensure the Constitution is compliant with relevant legislation
 - To review the Terms of Reference for Committees
 - To update Schemes of Delegation, Contract Procedure Rules, and Financial Regulations.
 - To seek member input
 - To recommend to Full Council a revised version of the Constitution
- 1.2. Legal and Governance officers in consultation with the Chair of Audit Committee and Deputy Leader and Executive Member (Resources) have been meeting to carry out the Review. The Chairs of Personnel Sub Committee; Pension Sub Committee and Pension Board have been consulted. The review has included a statutory compliance health check. Work is in hand with the Standards Committee to complement this work by updating the Member Code of Conduct and the statutory arrangements for dealing with allegations of member misconduct.
- 1.3. This Report updates members on the Review and makes recommendations to improve the Constitution in line with legislation and best practice.
- 1.4. This Report is seeking the Audit Committee's approval to the recommended amendments to the Constitution, marked as tracked changes in the Appendices.

- Appendix 1 Factual changes to Part 1 – Summary and Explanation
- Appendix 2 Revised Part 2 - Articles
- Appendix 3 Revised Part 3 - Responsibility for Functions
- Appendix 4 Revised Part 4 – Employment Procedure Rules
- Appendix 5 Revised Part 5 – Terms of Reference
- Appendix 6 Revised Part 6 – Codes and Protocols
- Appendix 7 Revised Part 8 – Updated Organisation Chart
- Appendix 8 Revised Constitution Appendices

2. Recommendations:

- 2.1. To note the work of the Constitution Review Working Group in reviewing the Constitution and proposing revisions to ensure legal compliance.

To agree and Recommend to Full Council to:

- 2.2. Agree the proposed revisions to Part 1 of the Constitution as detailed in Appendix 1
- 2.3. Agree the proposed revisions to the Articles of the Constitution as detailed in Appendix 2 and adding the Employee Code of Conduct as detailed in Appendix 5.
- 2.4. Adopt the revised Officer Employment Procedure Rules, which now incorporate the previously separate protocol document, in Appendix 4
- 2.5. Adopt revised Terms of Reference for the Audit Committee to establish it as the Audit and Risk Committee including authority to revise and keep up to date the Council's Financial Regulations and Procurement Rules as detailed in Appendix 5
- 2.6. Adopt revised Terms of Reference for the Standards Committee as detailed in Appendix 5
- 2.7. Adopt new Terms of Reference for the Pension Sub-Committee to establish it as a Pension Fund Committee appointed by the Council as detailed in Appendix 5
- 2.8. Adopt new Terms of Reference for the Pension Board as detailed in Appendix 5
- 2.9. Adopt new Terms of Reference for the Personnel Sub-Committee to establish it as an Employment and Appointments Committee appointed by the Council as detailed in Appendix 5

- 2.10. Adopt revised Terms of Reference for the Statutory Officer Grievance Committee and Appeals Committee so that it only applies to the Chief Executive as detailed in Appendix 5
- 2.11. Agree a Review of the Overview and Scrutiny function to include revised Terms of Reference for the Scrutiny Committees and Scrutiny Procedure Rules.

3. Background

- 3.1 The Audit Committee has responsibility for audit and governance matters under Article 8 of the Constitution. This includes responsibility for the Constitution and the rules, systems, and relationships which support the council to be effective, well run, and accountable.
- 3.2 The Constitution sets out how the council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to local people. The council has a legal duty to publish an up-to-date Constitution and it should be reviewed annually with any necessary changes being considered at the Full Council meeting.
- 3.3 Responsibility to monitor and review the operation of the Constitution is set out in Article 15 and belongs to full Council. The Monitoring Officer is authorised to make minor consequential amendments as necessary or required by legislation from time to time.
- 3.4 The Constitution must contain:
 - The Council's standing orders/ procedure rules.
 - The Members' Code of Conduct
 - Such information as the Secretary of State may direct.
 - Such other information (if any) as the Council considers appropriate
- 3.5 The Constitution currently comprises 374 pages organised into 8 parts, many divided into several sections. The document is difficult to navigate and a member of the public who did not already know which part to look in would find it difficult to locate a specific section of the Constitution as there is a very limited search facility.
- 3.6 Officers have also raised the following issues which have further prompted the need for a review:
 - A document which has grown over the years and is not internally consistent.
 - Legal compliance and extensive statutory references need to be reviewed
 - A more consistent approach to reviewing the Constitution on an annual basis.

- An unwieldy document that could be simplified and made more accessible for online viewing.
- Opportunities to reduce bureaucracy to help members and officers to take decisions more robustly with more clarity over who takes which decisions.

4. Statutory Compliance Health Check

- 4.1 A Constitution Direction was issued by the Secretary of State in December 2000 that requires 80 matters to be included within council constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of residents' rights.
- 4.2 Officers have carried out a comprehensive Statutory Compliance Health Check of the Constitution against these requirements which has resulted in the Recommendations in this Report.

5. Part 1 and Part 2 Articles

- 5.1 The proposed changes to Part 1 are consequential to the matters recommended in this report.
- 5.2 The proposed changes to the Articles are as follows:

Article 2 – Members of the Council: To correct number of councillors to 51 following elections in May 2022 and to insert a link to the democracy website councillors page to meet the requirement to provide information about the councillors, arising from the review of the statutory checklist

Article 7 – The Executive: To correct the number of councillors required for a vote of no confidence in the Leader (75% or 38), following the election in May 2022 and to insert a link to the democracy website councillors page to meet the requirement to provide information about the members of the Executive, arising from the review of the statutory checklist

Article 8 – Non-Executive Functions: To reflect the proposed changes to Audit Committee and Sub-Committees detailed elsewhere in this report and to update the information on Licensing Committee arrangements.

Article 12 – Officers: To reflect the changes in officer designations following the recent restructure.

Article 13 – Decision Making: To clarify the arrangements for making key decisions

Article 15 - Review, amendment, suspension and publication of the Constitution: To clarify the circumstances under which the Proper Officer may make amendments to the Constitution.

5.2 It is also recommended that the Monitoring Officer be responsible for keeping the Constitution under review reporting as appropriate to Audit Committee and Council and change the current requirement to involve the party Whips on constitutional change.

6. Audit Committee

6.1 The Audit Committee terms of reference have a complex format involving a range of advisory functions and decision-making functions.

6.2 In September 2022, the Committee carried out a review of its Terms of Reference noting that the current structure comprised two Committees: The Audit Committee and the Audit Advisory Committee. The Committee agreed the following recommendations:

- (a) That the word “Risk” be included in the new title of the Committee.
- (b) That all instances of the word “Our” in the proposed new Terms of Reference be replaced with the article “The”
- (c) That, subject to the incorporation of the suggested amendments above, the other proposed amendments to the Audit Committee Terms of Reference, detailed in the report of the Corporate Director of Resources, be noted.
- (d) That it be noted that any amendments would require formal approval at a future Council meeting.
- (e) That, before the final report is submitted to Council, the updated Terms of Reference be circulated to members of the Committee for further review and approval
- (f) That it be noted that the Committee’s future work plan would be reviewed by officers and the Chair to ensure that all aspects of the Terms of Reference were appropriately represented.
- (g) That it be noted that the Terms of Reference of the Pensions Sub-Committee and Personnel Sub-Committee would also be reviewed and submitted to a future meeting for consideration.

6.3 The proposed revisions considered by the Audit Committee are set out in Appendix 2 as track changes. They include the proposed new title Audit and Risk Committee and updated terms of reference. It is also recommended that the current structure of two committees, one advisory and one decision making be simplified to form one committee deleting reference to an advisory committee and advisory functions.

6.4 It is recommended that the function of receiving the annual report from the Monitoring Officer concerning standards of member conduct transfer to the Standards Committee

7. Pension Sub- Committee

- 7.1 The Audit Committee under its terms of reference has responsibility for establishing a Pensions Sub-Committee (PSC). The PSC membership is separate from the Audit Committee, not a derivation of its membership as required under the Local Government Act 1972. The process of how its membership is selected is undefined. The current terms of reference states: “No special requirements apply to the composition of the Pensions Sub-Committee”.
- 7.2 The membership of the PSC is composed of four elected members and has a quorum of two, that does not require either the Chair or Vice chair in attendance. There are two named substitute members. This is a very small committee given the scale and significance of the investment and decisions that are made.
- 7.3 Although there is no single model in operation across the over 80 Pension Fund authorities (LGPS) in England and Wales, most Funds are managed by a formal Committee appointed by the full Council. This Committee is usually called the Pension(s) Committee or sometimes the Pension Fund Committee. The arrangement in Islington is unusual and creating legal risk. It is recommended that the Pensions Sub-Committee should be separated from the Audit Committee and established as a separate committee with an elected member membership of 5 or 7 voting councillors.
- 7.4 Individual LGPS Pension Funds are administered by the relevant council and are a separate legal entity within the overall structure of that council. Under the Local Authority (Functions and Responsibilities) (England) Regulations 2000 (as amended) the LGPS is not an Executive function. Therefore, the Executive of a Council cannot make decisions in respect of the Pension Fund. Bullet point six of the current ToR states: “To consider the overall solvency of the Pension Fund, including assets and liabilities and to make appropriate recommendations to the Executive regarding the allocation of resources to the Pension Fund.” The Executive should not be involved in setting the resources of the Pension Fund. The Sub-Committee itself should be responsible for setting its own budget. The Committee responsible for the Pension Fund must report to the Council and cannot be subject to the Executive.
- 7.5 The PSC terms of reference as written are unusually brief at just seven bullet points. A comprehensive list of requirements should be listed in the new Terms of Reference to ensure the Committee are aware of their full remit. These are set out as track changes to the proposed new Pension Fund Committee’s Terms of Reference in Appendix 2.
- 7.6 Members of the Sub-Committee are the ultimate decision makers for investment related matters. As such, members are bound by the Directive on Markets in Financial Instruments repealing Directive 2004/39/EC (commonly known as MIFID II). This legislation requires the Pension Fund to “opt up” to professional status, and for

decision makers to demonstrate they have the collective knowledge and skills to make investment decisions. If members are not able to demonstrate this, there is a risk that the Pension Fund will not be able to access professional investments. A comprehensive training plan should be agreed for PSC members and this requirement be added to its Terms of Reference.

8. Pensions Board

- 8.1 The LBI Pension Board composition is currently three employer representatives, three member representatives and one independent member. The Constitution provides that all members of the Board shall be appointed by full Council or its Audit Committee which shall also appoint a chair from among the members of the Board. This practice is unusual, as the Pension Board should be responsible for electing its own chair. It is normal practice for the chairmanship to rotate annually from employer to member representatives. Paragraph 5.38 of the Statutory Local Government Pension Scheme (LGPS) Guidance on the creation and operation of Local Pension Boards in England and Wales alludes to this being appropriate.
- 8.2 Members of the Pension Board are required, under the LGPS scheme regulations 2013, to have “capacity” to represent the members and employers of the scheme. The statutory guidance interprets this as a requirement to ensure that the knowledge and skills of the membership are appropriate to effectively scrutinise the decisions of the committee. To assist the Administering Authority, it is implicit that members of a Local Pension Board understand the duties and obligations that apply to the Administering Authority as well as to themselves. This is expanded in section 6 of the statutory guidance which makes it clear this is a legal requirement. It is also suggested that Members of a Local Pension Board should undertake a personal training needs analysis and put in place a personalised training plan. This should be added to the ToR.
- 8.3 The Pension Board ToR are too brief and do not capture all the elements sufficiently from paragraphs 5.35 of the Statutory Guidance. A set of proposed revised Terms of Reference to be included in Part 5 of the Constitution and are shown as track changes in Appendix 5 to reflect the full requirements of the Statutory Guidance.

9. Personnel Sub Committee

- 9.1 The Audit Committee under its terms of reference has responsibility for establishing a Personnel Sub-Committee (PeSC). However, the PeSC membership is separate from the Audit Committee, not a derivation of its membership as required under the Local Government Act 1972.
- 9.2 The PeSC has a miscellaneous range of personnel functions covering the appointment of or disciplinary matters relating to Chief Officers. These need careful

review to ensure they are compatible with relevant legislation and contractual national and local terms and conditions for chief officers. They also need to complement the other Council bodies concerned with these matters: the Grievance Committee, Grievance Appeal Committee, Investigating and Disciplinary Committee and Disciplinary Appeal Committee.

- 9.3 Part of the remit of the PeSC has been to approve special severance payments for departing officers over £100,000. This is now out of date following publication of statutory guidance on 12 May 2022. This defines those payments to exclude contractual entitlements (such as redundancy/efficiency payments and any actuarial strain and sets out the process councils are expected to follow for such payments:

5.1 The government expects that any Special Severance payments should be approved according to the following process:

- payments of £100,000 and above must be approved by a vote of full council, as set out in the Localism Act 2011
- payments of £20,000 and above, but below £100,000, must be personally approved and signed off by the Head of Paid Service, with a clear record of the Leader's approval and that of any others who have signed off the payment
- payments below £20,000 must be approved according to the local authority's scheme of delegation. It is expected that local authorities should publish their policy and process for approving these payments

- 9.4 It is recommended that the Personnel Sub Committee be reconstituted as the Employment and Appointments Committee with the following terms of reference.

- To be responsible for the recruitment and appointment of Corporate Directors and Service Directors in accordance with Part 4, Rule 100.
- To recommend to Council on the designation of the Monitoring Officer and the Chief Finance Officer.
- To act as the Committee which makes recommendations to Council on the appointment of the Head of Paid Service (Chief Executive).
- To hear and determine appeals in connection with disciplinary action or dismissal of Chief Officers (except the Head of Paid Service, s151 Officer and Monitoring Officer)
- To make recommendations to Council on the appointment of independent persons to serve on the Standards Committee and Audit Committee.

10. Grievance Committee/ Appeal Committee

- 10.1 The Grievance Committee and Grievance Appeals Committee currently apply to Grievances against and by the statutory officer posts; Chief Executive, Monitoring Officer and Section 151 Officer.

- 10.2 These Committees are established under the auspices of the JNC Conditions of Service for Chief Executives. The JNC Handbook Grievance Procedures state that *“In principle it is for each local authority to determine its procedures and practical arrangements for the handling of grievances, taking into account the relevant considerations in general employment law. However, in the case of a chief executive, there are particular factors which may need to be borne in mind in the case of a grievance against a chief executive or a grievance brought by a chief executive, and the JNC has therefore adopted a Model Procedure for use in such circumstances”*. This is reflected in the current Terms of Reference for these committees save that the Council has also included the Monitoring Officer and s151 Officer in the procedures.
- 10.3 It is suggested that the Council revise these arrangements so that they only apply to the Chief Executive in the following circumstances:
- where an employee raises a grievance against the chief executive and/or
 - where a chief executive raises a grievance (this will be against an individual elected member(s) or the employing council generally).
- 10.4 Grievances involving the Monitoring Officer and s151 Officer do not involve the same factors as the Chief Executive, principally that the Chief Executive does not have a line manager. Instead, they would be treated in the same way as grievances against any employee including the other corporate directors.
- 10.5 The model procedure set out in the Constitution reflects the ACAS code and comprises two formal stages. After the initial filtering and any attempt at informal resolution, if the matter remains unresolved, then a panel of elected members (the Grievance Committee) will hear the grievance on behalf of the employer (Formal Stage 1). It is here that the power exists to resolve a grievance by or against the chief executive. The panel can either uphold or dismiss the grievance. If the outcome of the Stage 1 investigation is that the grievance is not upheld, then the complainant has the right to appeal (Formal Stage 2) to a panel of elected members (the Appeal Panel).

11. Standards Committee

- 11.1 The Standards Committee has not been meeting regularly over recent years as its remit has been limited to hearing complaints alleging member misconduct. It needs to have a more strategic role in promoting the Member Code of Conduct and ensuring the Council's statutory duty to promote and maintain high standards of conduct with an effective code of conduct complaints procedure.

11.2 It is recommended that the following functions are added to the current Terms of Reference of the Standards Committee as detailed in Appendix 2.

- to issue dispensations to any member in respect of statutory and non-statutory disclosable interests;
- to receive an annual report from the Monitoring Officer concerning standards of member conduct, which shall include a summary of complaints received under the Code of Conduct Complaints Procedure and their outcome;
- to oversee and approve the operation of the Council's functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members of the Council including:
 - (i) approving and issuing guidance to Members
 - (ii) making recommendations to Full Council regarding the suggested amendment of the Members' Code of Conduct
 - (iii) approving training to be provided to members in the Code of Conduct
 - (iv) monitoring the operation of the Code of Conduct

12. Licensing Committee and Licensing Regulatory Committee

12.1 Minor amendments in line with legislation to the Terms of Reference of these committees are shown in track changes in Appendix 5.

13 Officer Code of Conduct

13.1 The Officer Code of Conduct has been added into Part 6 of the Constitution as recommended during the statutory compliance health check.

14. Officer Employment and Procedure Rules

14.1 The Employment and Procedure Rules have been updated to incorporate the main elements of previously separate procedure guidance document and to refer to the Employment and Appointments Committee.

15. Overview and Scrutiny Function

15.1 Statutory Guidance was published in 2019 requiring councils to review their existing scrutiny arrangements and ensure they embed a culture that allows overview and scrutiny to flourish. The current arrangements at Islington have not been reviewed for

some time. There has also been change to Executive portfolios and Corporate and service directorates which would merit a review of the existing Scrutiny Committee terms of reference.

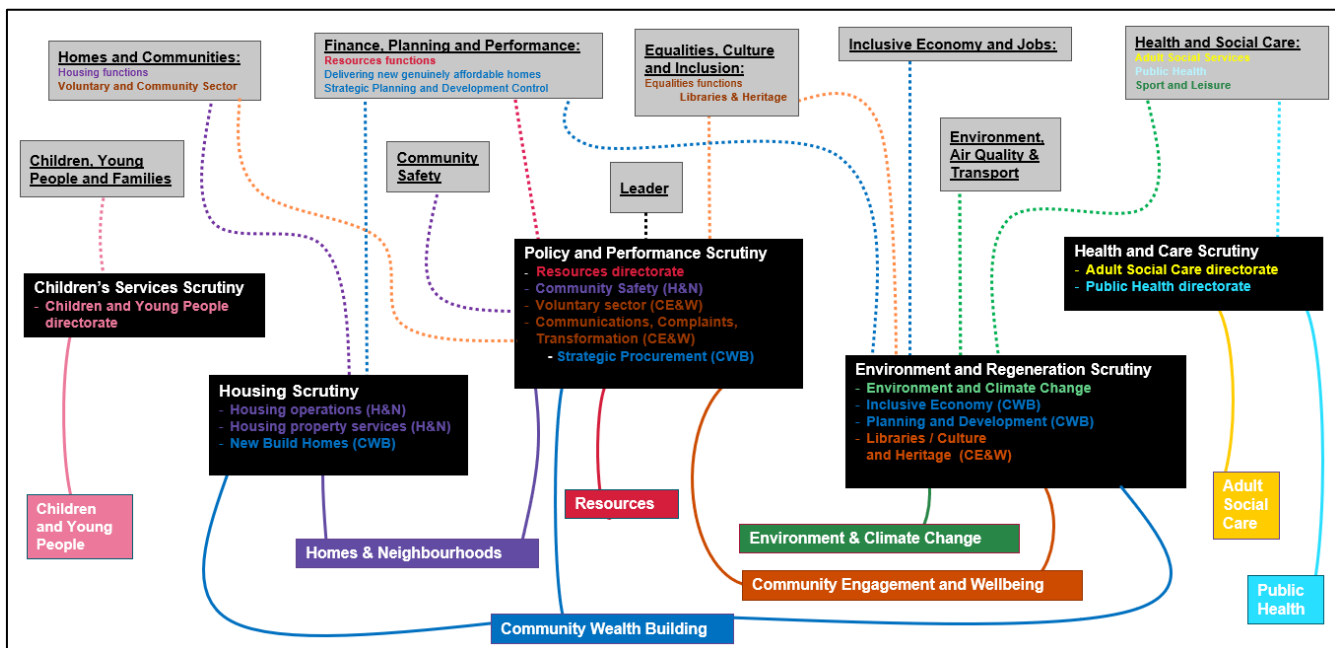
15.2 Overview and scrutiny committees were introduced in 2000 as part of new executive governance arrangements to ensure that members of an authority who were not part of the executive could hold the executive to account for the decisions and actions that affect their communities.

15.3 Overview and scrutiny committees have statutory powers to scrutinise decisions the Executive is planning to take, those it plans to implement, and those that have already been taken/implemented. Recommendations following scrutiny enable improvements to be made to policies and how they are implemented. Overview and scrutiny committees can also play a valuable role in developing policy.

Effective overview and scrutiny should:

- provide constructive ‘critical friend’ challenge
- amplify the voices and concerns of the public
- be led by independent people who take responsibility for their role
- drive improvement in public services

15.4 The diagram below shows the current reporting arrangements which are complex and do not enable cross service review or review of external issues.



15.5 A review can also codify the existing Islington arrangements for scrutiny reviews, call-in of executive decisions, policy development and evidence gathering. These have

developed as custom and practice over time and need to be published as part of the Scrutiny Procedure Rules of the Constitution.

- 15.6 It is therefore recommended that there should be a Governance Review in line with statutory guidance led by the Scrutiny Chairs over the summer enabling a report to full Council on 28 September 2023. This Review will support scrutiny members to recognise best practice, understand where scrutiny is adding value and identify improvements. It is suggested that the Centre for Public Scrutiny and Governance be approached to support this review and assist in ensuring a clear, consistent and transparent framework.

16 Implications

16.1 Financial Implications

There are no financial implications arising from this report.

16.2 Legal Implications

A local authority is under a duty to prepare and keep up to date its constitution under section 9P Local Government Act 2000 as amended. The Constitution must contain:

- a) The Council's standing orders/ procedure rules.
- b) The Members' Code of Conduct
- c) Such information as the Secretary of State may direct.
- d) Such other information (if any) as the authority considers appropriate.

A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of the rights of inhabitants of the area, amongst other things. Whilst issued under Part II Local Government Act 2000, the Direction survives the re-enactment into Part 1A (section 9B et seq.) of the 2000 Act by the Localism Act 2011 (under section 17 Interpretation Act 1978).

Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee.

16.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030

There are no environmental implications.

16.4 Equalities Impact Assessment

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

An Equalities Impact Assessment Screening Tool was completed on 24 April 2023. No negative impacts were identified therefore an Equalities Impact Assessment is not required for the purposes of this Report.

An up-to-date Constitution will ensure decisions contribute to the advancement of equality and good relations and demonstrate that the Council is paying due regard in our decision making in the design of policies and in the delivery of services.

17. Reasons for recommendations

The Audit Committee is asked to note and agree the recommendations to ensure the Constitution is legally compliant.

Appendices:

- Appendix 1 Factual changes to Part 1 – Summary and Explanation
- Appendix 2 Revised Part 2 - Articles
- Appendix 3 Revised Part 3 - Responsibility for Functions
- Appendix 4 Revised Part 4 – Employment Procedure Rules
- Appendix 5 Revised Part 5 – Terms of Reference
- Appendix 6 Revised Part 6 – Codes and Protocols
- Appendix 7 Revised Part 8 – Updated Organisation Chart
- Appendix 8 Revised Appendices to the Constitution

Background papers:

None

Final report clearance:

Approved by: Marie Rosenthal, Interim Director of Law & Governance and Monitoring Officer

Date: 9 May 2023

Report Author: Sonal Mistry, Interim Chief Lawyer (Governance)

Tel: 020 7527 3833

Email: sonal.mistry@islington.gov.uk

Legal Implications Author: Sonal Mistry, Interim Chief Lawyer (Governance)

Tel: 020 7527 3833

Email: sonal.mistry@islington.gov.uk